

1 SCOTT MCALPIN,

2 Petitioner,

3 v. **ORDER DENYING MOTION TO**  
4 MCDONALD, Warden, **STAY; DIRECTING PETITIONER**  
5 **RESPONDENT.** **TO FILE NOTICE; GRANTING**  
6 **LEAVE TO PROCEED IN FORMA**  
7 **PAUPERIS**8  
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14 (Docket Nos. 1, 6)15 Petitioner, a prisoner of the State of California, filed a habeas corpus petition pursuant to  
16 28 U.S.C. 2254. The petition sets forth one claim, and it challenges the constitutionality of  
17 Petitioner's conviction in state court. Along with his petition he filed a motion for a stay of this  
18 case while he exhausts additional claims in the state courts. The motion was denied because  
19 petitioner neither identified the claims he wishes to exhaust, shown that they are potentially  
20 meritorious, nor shown good cause for his failure to exhaust them prior to arriving in federal  
21 court, *see Rhines v. Webber* 544 U.S. 269, 278-79 (2005). Petitioner was given the opportunity  
22 to file a renewed motion for a stay that makes the proper showing under *Rhines*. Petitioner has  
23 filed a renewed motion for a stay.24 In his renewed motion, petitioner identifies two unexhausted claims he wishes to  
25 exhaust in the state courts while the instant matter is stayed: (1) that the prosecutor knowing  
26 presented perjured testimony; and (2) that the trial court lacked jurisdiction over his criminal  
27 proceedings. When liberally construed, these claims are cognizable bases for federal habeas  
28 relief, and thus are "potentially meritorious" within the meaning of *Rhines*. *See id.*

## United States District Court

For the Northern District of California

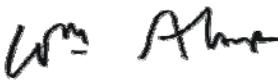
1 Petitioner has not, however, shown “good cause” for his failure to exhaust the claims  
2 prior to filing his federal petition. He states that he filed the instant petition approximately one  
3 year before he had, and that this demonstrates “his confusion and inability to understand the  
4 procedures.” A prisoner’s pro se status or ignorance of what procedures to follow does not in  
5 and of itself constitute good cause. *Cf. See Hughes v. Idaho State Bd. of Corrections*, 800 F.2d  
6 905, 909 (9th Cir. 1986) (illiteracy of pro se petitioner not sufficient to meet cause standard of  
7 procedural bar); *Tacho v. Martinez*, 862 F.2d 1376, 1381 (9th Cir. 1988) (mental condition of  
8 pro se petitioner and reliance upon allegedly incompetent jailhouse lawyers did not constitute  
9 cause); *cf. also Wooten v. Kirkland*, 540 F.3d 1019, 1024 (9th Cir. 2008) (upholding denial of  
10 stay because petitioner’s incorrect “impression” that counsel had raised claims to the California  
11 Supreme Court on direct appeal did not establish good cause under *Rhines* for failure to exhaust  
12 claims earlier). Indeed petitioner indicates that he had, and still has, ample time to exhaust his  
13 state claims in the state courts before filing his federal petition. Consequently, the renewed  
14 motion for a stay (docket number 6) is DENIED.

15 Within **30 days** of the date this order is filed, petitioner must notify the Court whether he  
16 wishes to (1) proceed with this matter based solely on the claim in the petition, or (2) to  
17 voluntarily dismiss this case without prejudice with an eye to exhausting and then filing another  
18 federal petition at a later date after he has exhausted all of the claims he wishes to raise in  
19 federal court. If petitioner fails to file a timely notice, this matter will proceed based solely  
20 upon the claim in the petition.

21 Petitioner’s application to proceed in forma pauperis (docket number 1) is **GRANTED**.

22 **IT IS SO ORDERED.**

23 Dated: October 7, 2011.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE